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IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE MARTIN, ET AL

Plaintiff-Respondent.

v.

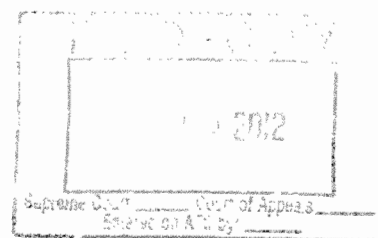
CAMAS COUNTY, IDAHO,
By and through the duly elected
Board of Commissioners in
their official capacities.

KEN BAXTROM,
BILL DAVIS, and
RON CHAPMAN,

Defendants-Appellants.

Case No: 36005-2009

36055



RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

The Honorable Robert Elgee, District Judge

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STATEMENT OF THE CASE

I. NATURE OF THE CASE

Defendant-Appellant. Camas County, (also referred to herein as “the government”) appeals the District Court, Judge Robert Elgee presiding, injunction holding for naught Camas County Ordinances Nos. 150 and 153 and Resolution Nos. 96 and 103. The government alleges the District Court erred in finding Plaintiff-Respondent, George Martin, had standing to challenge the government’s action, in addition to a host of other asserted procedural and substantive errors.

II. COURSE OF PROCEEDINGS

On or about May 4, 2007 George Martin filed a declaratory judgment action against Camas County seeking to enjoin the enforcement of Ordinance Nos. 150 and 153, and Resolution Nos. 96 and 103, respectively, an amended Zoning Map, Zoning Ordinance, Comprehensive Plan and Comprehensive Plan Land Use Map. (R. Vol. 1, PP. 10-16) The District Court first granted preliminary injunctive relief on December 28, 2007, followed by Orders Expanding Preliminary Injunction, entered on March 11, 2008, and Decision on Conflict of Interest for Purpose of Preliminary Injunction, entered on April 2, 2008. (R. Vol. 1, PP. 2-3, 196, 234, 264)

Thereafter, Camas County adopted, on May 12, 2008, Resolution Nos. 114 and 115, and Ordinance Nos. 157 and 158, new, virtually identical, Zoning Map, Zoning Ordinance, Comprehensive Plan and Comprehensive Plan Land Use Map. (R. Vol. 3, P.30) Martin sought to amend his complaint to include a prayer for relief enjoining the “re-amended” zoning ordinances and comprehensive plan, asserting alleged violations of the Idaho Local Land Use Planning Act (LLUPA), which request was denied. (R. Vol. 3,

P. 448) Martin subsequently filed a new Complaint for Declaratory Relief, Case No. CV-2008-40, on October 15, 2008. This second action, based upon nearly identical facts as the first action, concluded on May 6, 2009, by summary judgment being granted to Camas County, based upon the District Court, Judge John K. Butler presiding, holding Martin lacked standing. Martin v. Camas County, 150 Idaho 508, 248 P.3d 1243, at 1252 (Idaho 2011)

Meanwhile, the initial Martin action had been removed to federal court, on an ancillary issue. (R. Vol. 3, P. 468) However, the District Court, not recognizing it had been divested of jurisdiction, on December 3, 2008 issued its Finding of Fact, Conclusions of Law and Order Following Trial granting permanent injunctive relief as to the 2007 zoning amendments. (R. Vol. 3, P. 523) On May 27, 2009, the District Court reissued its December 2008 order enjoining Camas County. (R. Vol. 4, P. 659) Thus were established conflicting District Court Orders regarding the validity of Camas County's amended zoning ordinances, and whether Martin had standing to challenge same.

Camas County appealed the District Court order entered by Judge Elgee, in Martin's first action, and Martin appealed the District Court order entered by Judge Butler in Martin's second action. (R. Vol.3, P. 575) This Court entered its Order Granting Motion to Suspend Appeal on or about March 20, 2009, as to the instant matter, while appellate litigation continued in regard to the second Martin action, Camas County Case No. CV-2008-40, Supreme Court Case No. 366-05-2009. This Court issued its opinion, Martin v. Camas County, 150 Idaho 508, 248 P. 3d 1243 (Idaho 2011) holding Martin lacked standing.

III. STATEMENT OF FACTS

The essential facts relevant to the determination of these proceedings are as recited above; as recited by Camas County in Appellant's Brief; and as considered by the this Court in Supreme Court Case No. 36605-2009.

ADDITIONAL ISSUES ON APPEAL

Whether this Court's Opinion in *Martin v. Camas County*, in Supreme Court Case No. 366-05-2009, is the "law of the case" and therefore absolutely controlling of the issues now before court.

ARGUMENT

I. STANDING

Martin concedes, for purposes of this appeal, under the facts presented, considering the procedural history of this litigation, and the current state of Idaho law, he lacked standing to challenge Camas County's enactment of the 2006-2007 zoning amendments. Standing is a jurisdictional issue. Martin v. Camas County, 150 Idaho 508, 248 P.3d 1243, at 1252 (Idaho 2011) This Court, in its opinion cited above, rejected Martin's well founded arguments that he had standing to bring his declaratory judgment action against Camas County. Id at 1252. This Court held Martin failed to demonstrate that he suffered a distinct palpable injury, or that the *Koch* exception applied to the circumstances presented to the Court. Id at 1252.

The facts and circumstances presented to this Court in Supreme Court Case No. 366-05-2009. and those presented here, are essentially identical and are part of a continuing course of uninterrupted litigation between the same parties. The "law of the case" doctrine provides that when "the Supreme Court, in deciding a case presented

states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress, both in the trial court and upon subsequent appeal.” Swanson v. Swanson, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000), Spur Products Corp. v. Stoel Rives LLP, 143 Idaho 812, 153 P.3d 1158, at 1162 (Idaho 2007), Suitts v. First Sec. Bank of Idaho, 110 Idaho 15, 21, 713 P.2d 1374, 1380 (1985),

Furthermore, “[t]he doctrine of the law of the case provides that where an appellate court states a principle of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower court and on subsequent appeals as long as the facts are substantially the same.” *Office of State Eng’r v. Curtis Park Manor*, 101 Nev. 30, 692 P.2d 495, 497 (1985). The decision on an issue of law made at one stage of a proceeding becomes precedent to be followed in successive stages of that same litigation. “[L]ike stare decisis it protects against relitigation of settled issues and assures obedience of *inferior* courts to decisions of *superior* courts.” *NAACP, Detroit Branch v. Police Officers Ass’n*, 676 F.Supp. 790, 791 (E.D.Mich.1988). *Frazier v. Neilsen & Co.*, 118 Idaho 104, 106, 794 P.2d 1160, 1162 (Ct.App.1990) (emphasis added).

Swanson v. Swanson, 134 Idaho 512, 5 P.3d 973 (Idaho 2000)

In that Martin concedes the dispositive issue of standing the other allegations of error relating to LLUPA compliance need not be addressed. The facts presented here, relating to standing are “substantially the same,” therefore, it would not be reasonable for Martin to simply re-argue the law of standing as applicable to the facts here.

II. ATTORNEY FEES

In regard to attorney fees, Camas County is seeking reversal of attorney fees awarded to Martin by the District Court, and an award of attorney fees, both at the District Court level, and on appeal.

A. DISTRICT COURT AWARD TO MARTIN

The County cites Idaho Code section 12-117 as the basis for its request for attorney fees. The statute provided, in pertinent part, during the relevant time frame, as follows,

(1) Unless otherwise provided by statute, in any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county or other taxing district and a person, the court shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

(2) If the prevailing party is awarded a partial judgment and the court finds the party against whom partial judgment is rendered acted without a reasonable basis in fact or law, the court shall allow the prevailing party's attorney's fees, witness fees and expenses in an amount which reflects the person's partial recovery.

To award attorney fees under I.C. § 12-117 the Court must not only find a party acted without a reasonable basis in fact or law, but it must also find in favor of the party requesting fees. In re Daniel W., 145 Idaho 677, 183 P.3d 765 (Idaho 2008) This Court, in Daniel W., stated the purpose of I.C. § 12-117 is to serve as a deterrent to groundless or arbitrary action and to provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies should never have made. *Id.* (citing Rincover v. State, 132 Idaho 547, 549, 976 P.2d 473, 475 (1999)).

In Gardiner v. Boundary County Bd. of Com'rs, 148 Idaho 764, 229 P.3d 369 (Idaho 2010) this Court affirmed an award of attorney fees because the Board acted contrary to an unambiguous state statute and a local ordinance; comparing the facts to those in Lane Ranch Partnership v. City of Sun Valley, 145 Idaho 87, 88-91, 175 3d 776,

778-80 (2007) and Fischer v. City of Ketchum, 141 Idaho 349, 356, 109 P.3d 1091, 1098 (2005), because in both cases the government ignored the plain and unambiguous language of a statute or ordinance, which led to the award of attorney fees. “Typically, in analyzing an award of fees under I.C. § 12-117, this Court has looked to determine whether there was no authority at all for the agency's actions....” Ralph Naylor Farms, L.L.C. v. Latah County, 144 Idaho 806, 809, 172 P.3d 1081, 1084 (2007)

A party cannot be awarded attorney fees unless found to be the prevailing party. Highlands Development Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 (Idaho 2008) Given Martin’s concession, based on this Court’s ruling in Martin v. Camas County, 150 Idaho 508, 248 P. 3d 1243 (Idaho 2011), the District Court lacked standing to reach the merits of his claims against the government, he cannot be considered the prevailing party. Therefore, Martin must also concede the attorney fee award must be reversed. However, Martin will not concede he in any way acted without a reasonable basis in law or fact in bringing and prosecuting his action against Camas County.

B. COUNTY REQUEST FOR DISTRICT COURT ATTORNEY FEES

Camas County must persuade this court that Martin acted without a reasonable basis in law or fact, as provided by the statute, in bringing his action for Declaratory Judgment. The District Court’s findings on the merits of Martin’s claim, after hearing the testimony and considering the evidence, clearly show Camas County was not acting within the confines of LLUPA in enacting the comprehensive plan and zoning amendments at issue. (R. Vol. 3, PP. 529-546) This Court having found a lack of a distinct palpable injury to Martin, fairly traceable to the government’s actions, and therefore to lack standing, in no way leads to the conclusion Camas County acted within

the law, or that Martin acted without a reasonable basis in law or fact.

The District Court found not a single, but numerous failures to comply with the procedural requirements of LLUPA, surrounding the issue of maintenance of even the barest reviewable record, notice to the public, required recommendations from the Planning and Zoning Commission to the Board of Commissioners and notably, in regard to conflicts of interest. (R. Vol. 3 PP. 529-546) In addition to the Court's findings on the merits of Martin's allegations, the parties entered into a stipulation of fact confirming as true many of the alleged procedural failures by the County. (R. Vol. 3, P. 552-554)

Conspicuously, the County does not challenge or even address many of the District Court's findings on the merits. Particularly, Idaho Code Section 67-6509 makes certain procedural requirements in adoption of a Comprehensive Plans. The District Court found the requirements not to have been met by the record maintained and procedure employed by Camas County.

The District Court confirmed, as a matter of fact, Martin's allegations that certain Camas County officials proceeded in amending the zoning code with an economic conflict of interest. Idaho Code Section 67-6506. Specifically, the Court found it to be undisputed that both Smith (P& Z Chair) and Backstrom (Commission Chair) owned property directly affected by the zoning changes. (R. Vol. 2, P. 273) Camas County ignores the fact that Backstrom purchased property knowing it would be up zoned to a commercial designation and failed to even disclose his ownership of the property when he voted, without deliberation, on the rezone. The County does not argue the merits of this issue, instead it argues I.C. Section 67-6506 does not apply to "legislative activity" or alternatively, that the tainted vote(s) should simply be disregarded.

In that Martin prevailed on the merits it is difficult to conclude NO reasonable basis existed to pursue the litigation. Given the state of the law regarding standing; the Appellate and Supreme Court's case law invitations to bring a declaratory judgment action, rather than a petition for review in situations extremely similar to the matter pending before the court, can it be said the Martin's action had no reasonable basis in fact or law to attempt to correct "mistakes" that shouldn't have been made? As stated by the Miles Court in regard to standing, "While the doctrine is easily stated, it is imprecise and difficult in its application." Miles v. Idaho Power, 116 Idaho 635, at 641, 778 P.2d 757 (1989)

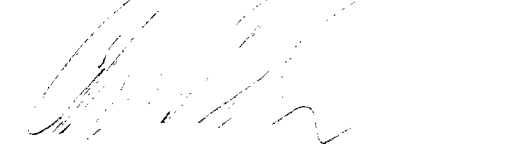
C. COUNTY REQUEST FOR ATTORNEY FEES ON APPEAL

The standard for an award of attorney fees on appeal pursuant to I.C. 12-117, is the same at trial, Ralph Naylor Farms, 144 Idaho 806, 172 P.3d 1081 at 1087, a party must act without a reasonable basis in fact or law. In that Martin has conceded his judgment awarded by the District Court, he cannot be found to have maintained a position contrary to fact or law.

CONCLUSION

Martin concedes he lacked standing to bring his declaratory judgment action against Camas County under the circumstances presented, based on this Court's prior Opinion. Under these circumstances attorney fees should not be awarded.

CHRISTOPHER P. SIMMS

A handwritten signature in dark ink, appearing to read "Chris Simms", is written over a horizontal line.

CERTIFICATE OF SERVICE

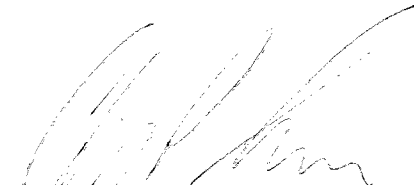
I HEREBY CERTIFY that on this 12 day of March 2012, pursuant to I.A.R. 34(a), I caused a true and correct copy of the foregoing document, RESPONDENT'S BRIEF, to be served to the following parties as addressed and delivered to each by US Mail, Postage Pre-Paid:

Original and six (6) bound copies, plus one (1) unbound copy:

The Clerk of the Supreme Court
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